

February 1st, 2010

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

SENSITIVE

MUR # 6252

Dear General Counsel:

Pursuant to 2 U.S.C. §437(g)(a)(1) and 11 C.F.R. §111.4 (2008), please accept this letter as a Complaint against Agnes "A. J." Otjen (Otjen) and A.J. Otjen for Congress ("the Committee") for operating in violation of the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission ("FEC" or "Commission") regulations, and more specifically, for violation of the "Stand By Your Ad" requirements of the Bipartisan Campaign Reform Act of 2002 (BCRA).

A. FACTS

The Committee is the principle campaign committee of Otjen. The Committee was created when Otjen became a candidate for the U.S. House of Representatives from Montana's At-Large Congressional District. The Committee's Form 1 Statement of Organization was filed with the FEC on October 13, 2009.

On November 7, 2009, the Committee began distributing a flier inviting recipients to an Otjen fundraiser to be held the following week. The communication, which did not include the necessary disclaimers, was sent out to recipients in multiple counties. Scans of this mass mailing are attached to this Complaint under Exhibits A and B.

On or about December 2, 2009, the Committee began running a thirty second radio advertisement featuring Otjen as the main speaker. Like the mass mailing, this form of political communication did not include the necessary disclaimers. A written transcript of this advertisement is attached to this Complaint under Exhibit C. In addition, an audio recording of this advertisement has been included on a compact disc and is being mailed with this Complaint.

B. LEGAL ARGUMENT: THE COMMITTEE HAS DISTRIBUTED PUBLIC COMMUNICATIONS WITHOUT THE PROPER DISCLAIMERS

The FECA provides that "whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising," the communication must contain a proper disclaimer identifying who paid for the communication. 2 U.S.C. §441d(a).

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The FEC's regulations detail the required contents of each disclaimer. 11 C.F.R. §110.11. "If the communication is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee..." 11 C.F.R. §110.11(b)(1). The regulations also require that a disclaimer be "presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or committee that paid for...the communication." 11 C.F.R. §110.11(c)(1).

COUNT ONE: MASS MAILING VIOLATION

The Commission's regulations require that disclaimers be used on, *inter alia*, "all public communications...made by a political committee." 11 C.F.R. §110.11(a)(1). "Public communications" include "mass mailings," which are defined as "a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." 2 U.S.C. §431(22); 11 C.F.R. §§100.26-.27. On information and belief, the flier in question was distributed by mail to over 500 recipients in multiple counties.

On printed communications, the disclaimer must also; 1.) "be of sufficient type size to be clearly readable"; (2) "contained in a printed box set apart from the other contents of the communication"; and (3) "printed with a reasonable degree of color contrast between the background and the printed statement." 11 C.F.R. §110.11(c)(2). The flier included none of these. By distributing the flier without the proper disclaimer, the communication violates the requirements of 2 U.S.C. §441d.

COUNT TWO: RADIO BROADCAST VIOLATION

Political advertisements transmitted through radio also fall within the scope of 2 U.S.C. §441d(a). Public communications transmitted through radio must include, *inter alia*, "an audio statement by the candidate that identifies the candidate and states that he or she has approved the communication." 11 C.F.R. §110.11(c)(3)(i).

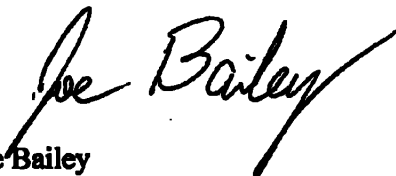
In the radio advertisement, Otjen identifies herself but does not include a statement saying she approves the communication. The word "approve" or "approved" is included in both examples of acceptable disclaimers listed under 11 C.F.R. §110.11(c)(3)(iv)(A). As such, the advertisement violates the disclaimer requirements of 2 U.S.C. §441d.

C. REQUESTED ACTION

Based upon the facts and statutory requirements relayed herein, A.J. Otjen and A.J. Otjen for Congress have violated the Federal Election Campaign Act of 1971, as amended, and FEC regulations. Accordingly, I respectfully request that the Commission conduct an immediate investigation into the violations outlined above and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

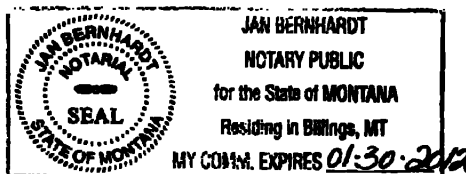
Respectfully submitted,



Joe Bailey

Billings, MT 59102

Sworn to and subscribed before me this 8th day of February, 2010.



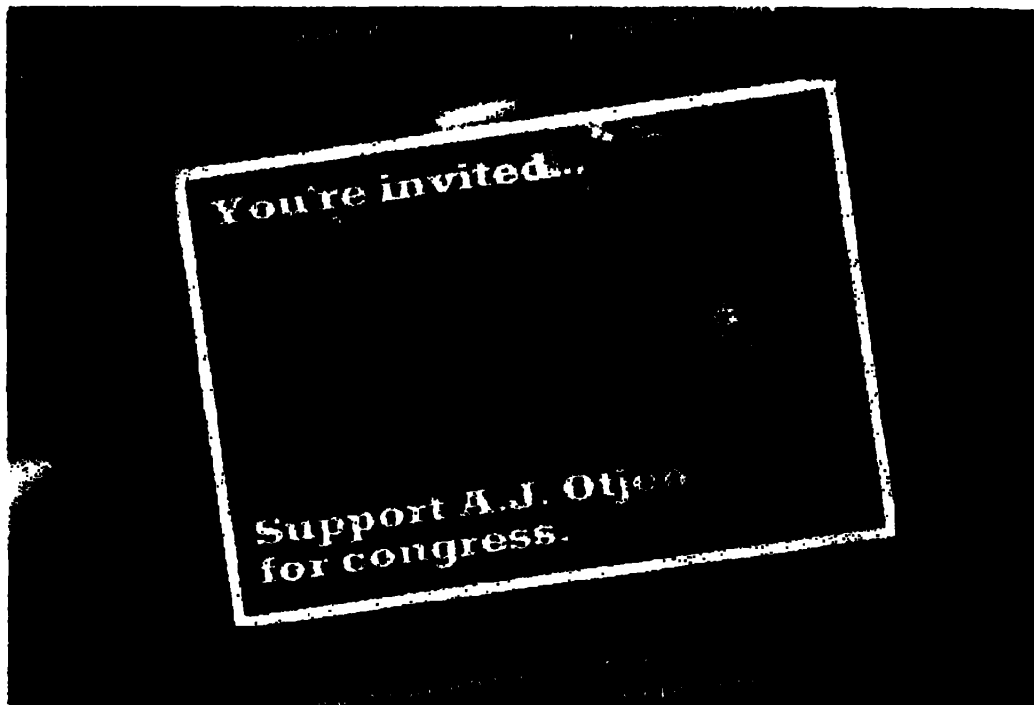

Notary Public

My Commission Expires: 01-30-2012

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EXHIBIT A—MASS MAILING PIECE DISTRIBUTED IN BILLINGS, MT
(YELLOWSTONE COUNTY) ON NOVEMBER 7, 2009

Front:



Back:



BILLINGS MT 591
NOV 10 2009 PM 11



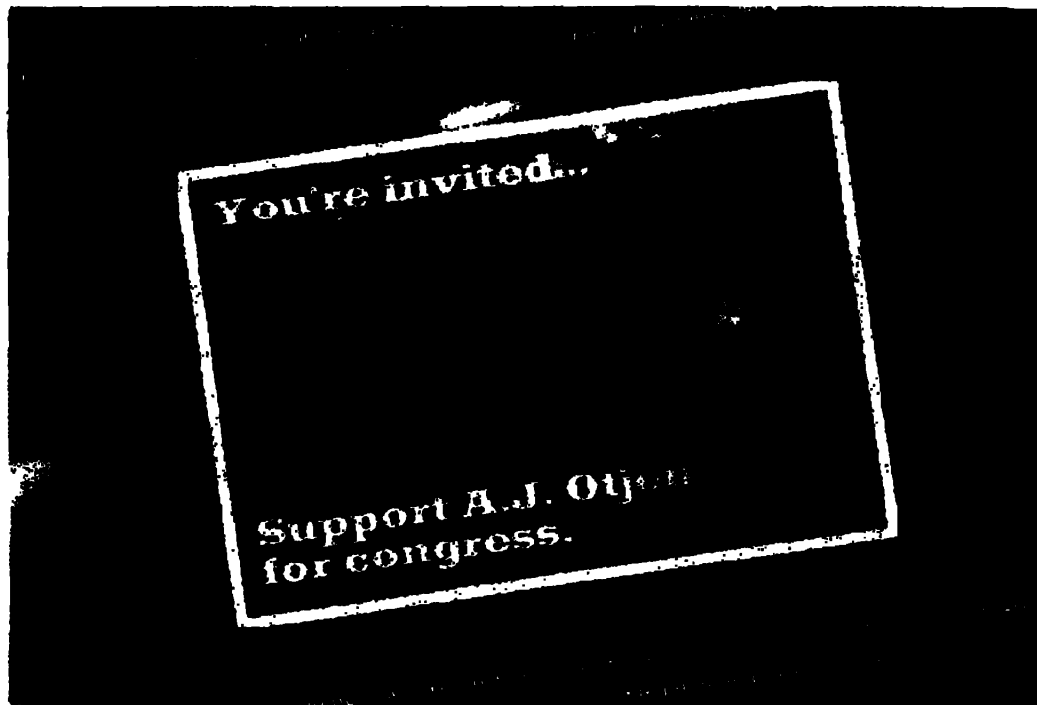
"Recipient's name and street
address have been removed
for confidentiality."

Billings 59104-

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EXHIBIT B—MASS MAILING PIECE DISTRIBUTED IN BOZEMAN, MT (LEWIS &
CLARK COUNTY) ON NOVEMBER 7, 2009

Front:



Back:

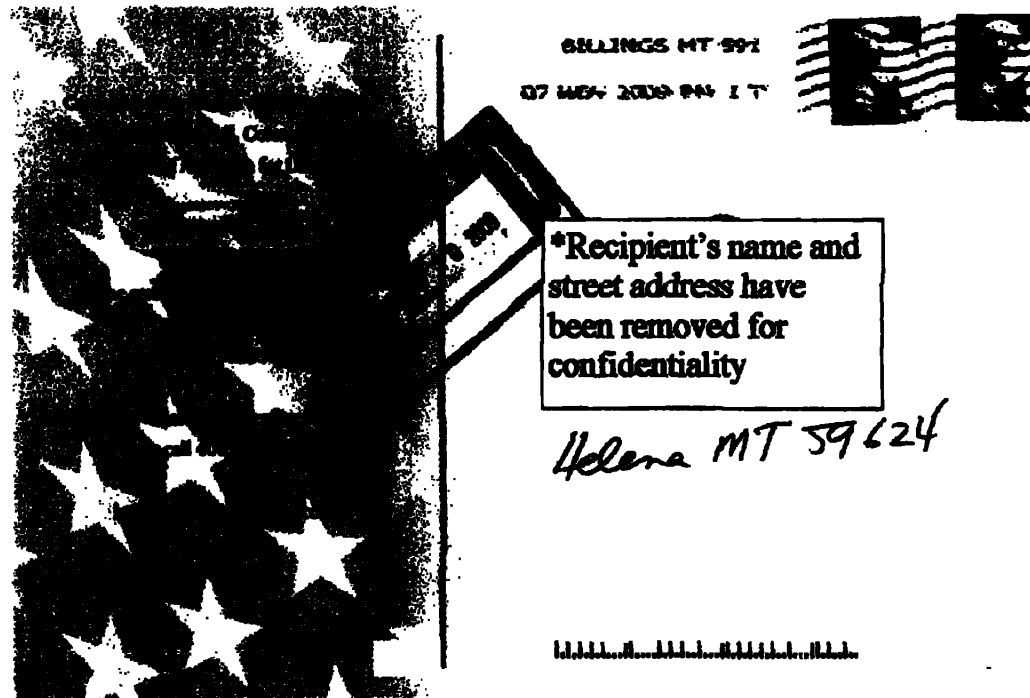


EXHIBIT C—TRANSCRIPT OF RADIO ADVERTISEMENT BROADCAST ON OR ABOUT
DECEMBER 2, 2009

Speaker:	Dialogue:	Length:
None	Musical introduction	10 seconds
A.J. Otjen	"This is A.J. Otjen for U.S. Congress. The last ten years, Congress has not balanced the budget. This is going to get worse if we don't work together. I know business, and technology, and opportunity. We need a new vision for the future. Please go to OtjenforCongress.com. That's O-T-J-E-N."	17 seconds
Narrator	"Paid for by OtjenforCongress.com"	3 seconds

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